IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.224 OF 1995

Rashmi Bharat Dalia ....Appellant

V/s.

Arjun S. Mirajkar & Anr. ....Respondents

Mr.G.S. Hegde for the Appellant.

CORAM : S. RADHAKRISHNAN &
S.J. VAZIFDAR, JJ.
DATED : 16TH SEPTEMBER, 2004.

P.C. :

1. This is a First Appeal against the order and judgment of the District Judge, Thane allowing the Appellant's claim only to the extent of Rs.3,25,000/- with interest at 12% p.a. from the date of the Petition i.e. 9th April, 1987.

2. The Appellant is the widow of one Bharat B. Dalia, who expired in a road accident on 10th October, 1986. Respondent No.2 is the National Insurance Co. Ltd.

3. On 10th October, 1986, the deceased was travelling in his car from Mumbai to Pune. The driver of a truck owned by Respondent No.1 collided with the car while trying to overtake another vehicle. The truck driver lost control and the truck went over the divider and collided with the car. The deceased succumbed to the injuries suffered by him in the accident.

4. The co-passengers of the deceased had also filed claims against the Respondents in respect of the same accident. In those proceedings, it was held that the accident was caused as a result of the rash and negligent driving of the truck driver. The learned Judge, therefore, proceeded on the basis that the accident was caused due to rash and negligent driving of the truck driver and that the driver of the car was not guilty of any such act. This finding was not challenged before us. Nor was it contended to the contrary before the learned Judge. As we do not intend disturbing the impugned judgment except to the extent of enhancing the claim by Rs.2,25,000/- under one of the heads, it is not necessary to set out all the facts and evidence. The same have been dealt with sufficiently by the learned Judge.

5. While computing the income of the deceased, the learned Judge accepting the Appellant's case held that the business carried on by her as a sole proprietor in the firm name and style of M/s.Weldoweld Industries was in fact looked after by the deceased. The learned Judge, however, held that there was no satisfactory evidence of the closure of the business. He therefore awarded a sum of Rs.15,000/- in respect of the loss suffered by the Appellant qua the said business. The Appellant's contention was that the amount earned in the said business was actually on account of her deceased husband but that the same was carried on in her name for the purpose of tax planning.

6. At present we are not concerned with the income tax angle. Be that as it may, the fact remains that the amount earned in the said business constituted the earning capacity of the deceased and must therefore be taken into consideration while computing the Appellant's loss. The only question, therefore, is whether there is any evidence of the fact that the business had to be discontinued as a result of the death of the deceased.

7. The question must be answered in the affirmative, in favour of the Appellant. The business of M/s.Weldoweld Industries was initially carried on as a partnership business. The Appellant examined herself. She stated that after the death of her husband, the proprietary concern was closed. The Respondents no doubt put their case to her that the business was continued and was not adversely affected. Other than that solitary suggestion, they produced no evidence to establish that the business was continued. The Appellant was not even called upon by the Respondents either in the cross-examination or otherwise to produce any documents. More important however is the evidence of the Tax Consultant of the deceased. He has furnished considerable details regarding the financial affairs of the deceased. In his cross-examination, he stated that on account of the death of the deceased, there was a total loss of the business which had closed down. This evidence was not even sought to be controverted by the Respondents. The various documents exhibited in evidence support the Appellant’s case. We are therefore of the opinion that there is sufficient evidence of the fact that the said business had closed down as a result of the death of the deceased.

8. The Tax Consultant, however, assessed the loss of income in the sum of Rs.1,25,000/-. We are unable to agree that the entire amount ought to have been allowed by the learned Judge. The learned Judge computed the income of the deceased at Rs.2500/- per month. While doing so, he only took into consideration the income of the deceased, which he earned as the commission agent. The learned Judge disregarded the income derived from the said business.

9. We examined the record and proceedings. In particular we examined the income tax returns in respect of the said business. In the relevant year, the income was approximately Rs.25,000/- per annum. The learned Judge had deducted 1/3rd from the income assessed by him. We would also deduct a sum of 1/3rd from the said sum of Rs.25,000/-. Thus an amount of Rs.15,000/- p.a. is the fair and reasonable estimate of the earnings from the said business. To this, we would consider a multiplier to Rs.15,000/- as had been agreed between the parties. Thus the Appellant would be entitled to an additional amount of Rs.2,25,000/-.

10. In the circumstances, the impugned order is set aside only to the above extent. In the result, the claim Petition is allowed as per the impugned order and

judgment including as to interest but in the sum of Rs.5,50,000/- instead of a sum of Rs.3,25,000/-. The Respondents shall jointly and severally pay the costs of this First Appeal to the Appellant fixed at Rs.5000/-.

. Parties to act on an ordinary copy of this order duly authenticated by the Associated/Court Stenographer of this Court.

(S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)